

## Chapter 4: Off Road Vehicles

### Part A—An Overview of the ORV Act

|     |   |     |
|-----|---|-----|
| 4.1 | Introduction .....  | 172 |
| 4.2 | Definitions in ORV Act .....                                | 173 |
| 4.3 | Authority of District Court Magistrates Under ORV Act ..... | 176 |
| 4.4 | Authority of DNR Enforcement Officers Under ORV Act .....   | 177 |
| 4.5 | Enforcement of ORV Act on Federal Property .....            | 179 |
| 4.6 | Enforcement of ORV Act on Private Property .....            | 180 |
| 4.7 | Rule Making Authority of DNR.....                           | 180 |
| 4.8 | Penalty Provisions in ORV Act .....                         | 181 |

### Part B—Traffic Offenses in the ORV Act

|      |  |     |
|------|--|-----|
| 4.9  | Titling Requirements .....   | 184 |
| 4.10 | Licensing Requirements .....   | 185 |
| 4.11 | Equipment Requirements .....   | 187 |
| 4.12 | Operation of ORVs on Public Highways and Streets .....                             | 188 |
| 4.13 | Operation of ORVs in Prohibited Places.....  | 189 |
| 4.14 | Operation of ORVs by Children Under 16 Years of Age .....                          | 191 |
| 4.15 | Allowing a Mentally or Physically Incompetent Person to<br>Operate an ORV .....    | 194 |
| 4.16 | Operation of ORVs in a Careless, Unsafe, or Otherwise<br>Prohibited Manner .....   | 194 |
| 4.17 | Operation of ORVs at a Greater Than Minimum Speed at Prohibited<br>Locations ..... | 196 |
| 4.18 | Operation of ORV After Operating Privileges Have Been<br>Suspended .....           | 197 |
| 4.19 | Operation of ORV After Driver's License Has Been Suspended<br>or Revoked.....      | 198 |

### Part C—Drunk Driving Offenses in the ORV Act

|      |   |     |
|------|---|-----|
| 4.20 | Operating an ORV While Visibly Impaired (OWVI) .....  | 200 |
| 4.21 | Operating an ORV While Under the Influence of Intoxicating<br>Liquor and/or a Controlled Substance or with an Unlawful<br>Bodily Alcohol Content (OWI)..... | 202 |
| 4.22 | OWI or OWVI Causing Death .....   | 205 |
| 4.23 | OWI or OWVI Causing Serious Impairment of a Body<br>Function .....  | 206 |
| 4.24 | Knowingly Allowing Another to Operate an ORV While Under<br>the Influence of Intoxicating Liquor and/or a Controlled Substance .....                        | 208 |
| 4.25 | Chemical Tests of Blood, Urine, or Breath .....   | 209 |
| 4.26 | Admissibility of Chemical Tests .....   | 211 |
| 4.27 | Presumptions Based on Chemical Tests .....  | 212 |

|  |            |
|--|------------|
| <b>Appendix—Michigan's Off-Road Vehicle Guide.....</b> | <b>213</b> |
|--|------------|

## Part A—An Overview of the ORV Act

### 4.1 Introduction

The Off-Road Recreation Vehicle Act (ORV Act) is codified as Part 811 of the Natural Resources and Environmental Protection Act (NREPA). MCL 324.81101 et seq. It was enacted in 1995 as a replacement for the previous Off-Road Recreational Vehicles statute that had been codified as Chapter 16 of the Motor Vehicle Code. See MCL 324.90106, repealing MCL 257.1601 to MCL 257.1626, effective May 24, 1995. All of the provisions that had been in the Motor Vehicle Code were renumbered and then codified as Part 811 of the NREPA. The Legislature made no substantive changes to the contents of those provisions. MCL 324.107 states:

“It is the intention of the legislature that editorial changes in the language of statutes codified as parts within this act not be construed as changes to the meanings of those statutes.”

The ORV Act requires all ORVs (except those operated on private property) to be operated on a statewide ORV trail system maintained by the Department of Natural Resources (DNR). MCL 324.81127(1). The Upper Peninsula of Michigan is exempted from the ORV trail system requirement. MCL 324.81126.\*

Copies of maps of ORV trails shall be made available to each person who obtains an ORV certificate of title issued by the Secretary of State. MCL 324.81123(5). Additional copies shall be made available for distribution at each county sheriff’s office and each DNR field office. *Id.* Maps of ORV trails are also available online at [www.michigan.gov/dnr/0,1607,7-153-10365\\_15070-38330--,00.html](http://www.michigan.gov/dnr/0,1607,7-153-10365_15070-38330--,00.html) (last visited on June 29, 2005).

The ORV trail system is funded from the licensing fees collected by the DNR. MCL 324.81117.\*

The offenses established by the ORV Act can be grouped into the following categories:

- Titling requirements.
- Licensing requirements.
- Equipment requirements.
- Operation of ORVs on public highways and streets.
- Operation of ORVs in places where ORVs are prohibited.
- Operation of ORVs by children less than 16 years of age.

\*See Section 4.2, below, for more information about Michigan’s ORV trail system.

\*See Section 4.10, below, for a more detailed discussion of the licensing requirements of the ORV Act.

- Allowing a mentally or physically incompetent person to operate an ORV.
- Operation of ORVs in a careless, unsafe, or otherwise prohibited manner.
- Operation of ORVs at a greater than minimum speed at prohibited locations.
- Operation of ORVs after ORV operating privileges have been suspended.
- Operation of ORVs after the operator's driver's license has been suspended or revoked.
- Operation of ORVs while intoxicated or impaired and related drunk driving offenses.

The drunk driving ORV offenses are discussed in Part C. All of the other above-enumerated offenses are discussed in Part B.

## 4.2 Definitions in ORV Act

MCL 324.81101(m) states:

“‘ORV’ or ‘vehicle’ means a motor driven off-road recreation vehicle capable of cross-country travel without benefit of a road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain. ORV or vehicle includes, but is not limited to, a multitrack or multiwheel drive vehicle, an ATV, a motorcycle or related 2-wheel, 3-wheel, or 4-wheel vehicle, an amphibious machine, a ground effect air cushion vehicle, or other means of transportation deriving motive power from a source other than muscle or wind. ORV or vehicle does not include a registered snowmobile, a farm vehicle being used for farming, a vehicle used for military, fire, emergency, or law enforcement purposes, a vehicle owned and operated by a utility company or an oil or gas company when performing maintenance on its facilities or on property over which it has an easement, a construction or logging vehicle used in performance of its common function, or a registered aircraft.”

“‘ATV’ means a 3- or 4-wheeled vehicle designed for off-road use that has low-pressure tires, has a seat designed to be straddled by the rider, and is powered by a 50cc to 500cc gasoline engine or an engine of comparable size using other fuels.” MCL 324.81101(a).

“‘Designated’, unless the context implies otherwise, means posted open for ORV use with appropriate signs by the department.” MCL 324.81101(d).

“‘Forest road’ means a hard surfaced road, gravel or dirt road, or other route capable of travel by a 2-wheel drive, 4-wheel conventional vehicle designed for highway use, except an interstate, state, or county highway.” MCL 324.81101(e).

“‘Forest trail’ means a designated path or way capable of travel only by a vehicle less than 50 inches in width.” MCL 324.81101(f).

“‘Highway’ means the entire width between the boundary lines of a way publicly maintained when any part of the way is open to the use of the public for purposes of vehicular travel.” MCL 324.81101(g).

“‘Operate’ means to ride in or on, and be in actual physical control of, the operation of an ORV.” MCL 324.81101(k).

“‘Operator’ means a person who operates or is in actual physical control of the operation of an ORV.” MCL 324.81101(l).

MCL 324.81101(n)(i)-(iii) defines “owner” as any of the following:

“(i) A vendee or lessee of an ORV which is the subject of an agreement for the conditional sale or lease of the ORV, with the right of purchase upon performance of the conditions stated in the agreement, and with an immediate right of possession vested in the conditional vendee or lessee.

“(ii) A person renting an ORV, or having the exclusive use of an ORV, for more than 30 days.

“(iii) A person who holds legal ownership of an ORV.”

“‘Visual supervision’ means the direct observation of the operator with the unaided or normally corrected eye, where the observer is able to come to the immediate aid of the operator.” MCL 324.81101(w).

DNR Administrative Rule 299.921 establishes the following additional definitions:\*

“(d) ‘Designated’ means listed in a director’s order, posted with a sign or signs at the site, or reasonably identified for a particular use.

“(e) ‘Designated area’ means an area that has been properly signed on the ground for cross-country ORV use.

“(f) ‘Designated route’ means forest roads that have been properly signed on the ground for ORV use.

“(g) ‘Designated trail’ means a 1-track path or way which is capable of travel by a 2- to 4-wheel vehicle that is less than 50

\*See Section 4.7, below, for a discussion of the rule making authority of the DNR.

inches in width and which has been properly signed on the ground for ORV use.

\* \* \*

“(j) ‘ORV’ means a motor-driven off-road recreational vehicle capable of cross-country travel without benefit of a road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain. ‘ORV’ includes, but is not limited to, any of the following:

“(i) A multitrack or multiwheel drive or low pressure tire vehicle.

“(ii) A motorcycle or related 2-wheel or 3-wheel vehicle.

“(iii) An amphibious machine.

“(iv) A ground effect air cushion vehicle.

“(v) Another means of transportation deriving motive power from a source other than muscle or wind. ‘ORV’ does not include a registered snowmobile, a farm vehicle being used for farming, a vehicle used for military, fire, emergency, or law enforcement purposes, a construction or logging vehicle used in performance of its common function, or a registered aircraft.

\* \* \*

“(m) ‘Properly signed on the ground’ means that signs have been posted by the department to mark the location or boundary of a designated trail, route, or area.”

In Michigan’s Lower Peninsula, the ORV system is composed of designated trails, designated routes, and designated areas (scramble areas). Michigan’s Upper Peninsula is open to the use of ORVs on designated trails and forest roads, unless an area is posted closed.\* In addition, the ORV Act allows local units of government to pass ordinances establishing access routes along streets and highways under their jurisdiction. MCL 324.81131.

\*See the Appendix at the end of this chapter, *Michigan’s Off-Road Vehicle Guide*, for more information.

Lands administered by the DNR fall into the following classifications:

- State forests are located primarily in the northern half of the Lower Peninsula and the Upper Peninsula. These properties are not distinguished by boundary signing; may be in very large blocks or in small, dispersed parcels; and may contain private holdings within the state forest. State forest lands are administered by the Forest Management Division of DNR.

- State parks and recreation areas are located throughout the state. With the exception of some recreation areas, these lands are generally contiguous properties; signed on their boundaries; more intensively managed; and apply more restrictions to ORV use. These lands are administered by the Parks and Recreation Bureau of DNR.
- State game areas are primarily located in the southern portion of the Lower Peninsula. These lands may be very large parcels or small mini-game areas; *all* motorized vehicle operation is prohibited except on established roads open to the public; ORVs are specifically prohibited. These lands are administered by the Wildlife Bureau of DNR.
- Public access sites, often referred to as public boat launches, are located throughout Michigan. The majority of public access sites are small, discrete parcels; signed on their boundaries; and generally ORV use is only permitted on access roads and in parking areas. These lands are administered by the Parks and Recreation Bureau of DNR.

### 4.3 Authority of District Court Magistrates Under ORV Act

#### A. Misdemeanors Punishable by Not More Than 93 Days

MCL 600.8511(c), of the Revised Judicature Act, provides that district court magistrates, when authorized by the chief judge of the district court, have the authority to arraign and sentence upon pleas of guilty or nolo contendere for misdemeanor violations of the ORV Act, or substantially corresponding local ordinances, when the maximum penalty does not exceed 93 days in jail or a fine, or both. However, this authority does *not* include the authority to sentence a defendant for a violation of MCL 324.81134 or MCL 324.81135, or a substantially corresponding local ordinance.\* For these ORV drunk driving offenses, the magistrate has limited authority to arraign the defendant and set bond. MCL 600.8511(c).

#### B. State Civil Infractions

MCL 600.8512(1) states:

“A district court magistrate may hear and preside over civil infraction admissions and admissions with explanation and conduct informal hearings in civil infraction actions pursuant to [MCL 257.746], [MCL 600.8719], or [MCL 600.8819], as applicable. In exercising the authority conferred by this subsection, the magistrate may administer oaths, examine witnesses, and make findings of fact and conclusions of law. If the

\*MCL 324.81134 and MCL 324.81135 contain drunk driving offenses. See Sections 4.20-4.23, below, for a summary of these offenses.

defendant is determined to be responsible for a civil infraction, the magistrate may impose the civil sanctions authorized by [MCL 257.907], [MCL 600.8727], or [MCL 600.8827], as applicable.”

MCL 600.8819 describes the procedures to follow at informal hearings\* in state civil infraction actions. MCL 600.8819(1) states:

“An informal hearing shall be conducted by a district court magistrate, if authorized by the judge or judges of the district court district, or by a judge of the district court or a municipal court. A district court magistrate may administer oaths, examine witnesses, and make findings of fact and conclusions of law at an informal hearing. The judge or district court magistrate shall conduct the informal hearing in an informal manner so as to do substantial justice according to the rules of substantive law, but is not bound by the statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions relating to privileged communications. There shall not be a jury at an informal hearing. A verbatim record of an informal hearing is not required.”

\*See Volume 1, Sections 1.13–1.15 for more information on informal hearings.

See Volume 1, Section 1.4 for more information on a magistrate’s authority to conduct hearings.

#### 4.4 Authority of DNR Enforcement Officers Under ORV Act

DNR conservation officers and commissioned park and recreation officers have the authority to issue appearance tickets and make arrests for violations of the ORV Act.

**DNR conservation officers.** DNR conservation officers are vested with all the powers and duties conferred upon peace officers. MCL 324.1501 states:

“Conservation officers appointed by the [DNR] and trained and certified pursuant to [MCL 28.601] to [MCL 28.616], are peace officers, and except as otherwise provided by law, are vested with all the powers, privileges, prerogatives, and immunities conferred upon peace officers as provided in this act, in [MCL 300.21] to [MCL 300.22], and in the general laws of this state.”

MCL 324.1502 states:

“Except as otherwise provided by law, conservation officers appointed by the [DNR] have the same power to serve criminal process and to require aid in executing criminal process as sheriffs, and are entitled to the same fees as sheriffs in performing those duties under this act, under [MCL 300.21 to MCL 300.22], and under the general laws of this state.”

\*See Section 4.7, below, for information on rules and orders created pursuant to MCL 324.504.

**Commissioned park and recreation officers.** Commissioned park and recreation officers are vested with the powers, privileges, prerogatives, and immunities conferred upon peace officers. MCL 324.1606 states, in part:

“(2) The [DNR] may commission park and recreation officers to enforce, on property regulated under part 741[state parks] or 781[state waterways], rules promulgated by the [DNR] and orders issued by the [DNR] that are authorized in those rules, including, but not limited to, rules promulgated or orders issued under [MCL 324.504\*], and any laws of this state specified in those rules as enforceable by commissioned park and recreation officers. In performing those enforcement activities, commissioned park and recreation officers are vested with the powers, privileges, prerogatives, and immunities conferred upon peace officers under the laws of this state. However, a park and recreation officer enforcing rules, orders, or laws described in this subsection on property regulated under part 781 [state waterways] may arrest an individual only for a minor offense committed in the officer’s presence and shall issue an appearance ticket as provided in subsection (6).

“(3) In addition to the limited arrest authority granted in subsection (2), on property regulated under part 741[state parks], a commissioned park and recreation officer may arrest an individual without a warrant if 1 or more of the following circumstances exist:

\* \* \*

“(b) The park and recreation officer has reasonable cause to believe that a felony has been committed and reasonable cause to believe that the individual has committed it.

\* \* \*

“(e) The person violates part 741, 811, or 821 or section 80198b.

\* \* \*

“(4) In addition to the limited arrest authority granted in subsection (2), on property regulated under part 781[state parks], a commissioned park and recreation officer may arrest an individual without a warrant for a minor offense listed in subsection (3) committed in the officer’s presence and shall issue an appearance ticket as provided in subsection (6).

\* \* \*



“(6) If a conservation officer or a park and recreation officer commissioned under subsection (2) arrests a person without warrant for a minor offense committed in the officer’s presence, instead of immediately bringing the person for arraignment by the court having jurisdiction, the officer may issue to and serve upon the person an appearance ticket as authorized by . . . MCL 764.9c to 764.9g. However, if a park and recreation officer commissioned under subsection (2) arrests a person without a warrant for a minor offense committed on property regulated under part 781[state waterways] in the officer’s presence, the park and recreation officer shall issue and serve upon the person such an appearance ticket.”

**Note:** DNR officers have additional authority pursuant to MCL 324.1606. However, those authorities are outside of the scope ORV enforcement. See MCL 324.1606 for a complete listing of a DNR officer’s authority.

In addition to the statutorily defined enforcement authority, DNR Administrative Rule 299.932(*l*) provides that a state forest officer may enforce MCL 324.81101 to MCL 324.81150 (the ORV Act).

## 4.5 Enforcement of ORV Act on Federal Property

The Michigan ORV Act is enforced in the three national forests in Michigan. This includes titling, licensing, equipment requirements, and general operating restrictions. In cases of individuals operating an ORV in a closed area, road, or trail, the violation cited will be MCL 324.81133(r), operating in a manner contrary to operating regulations on public lands.<sup>\*</sup> Michigan conservation officers are the primary enforcing agency of the Act on these lands. Law enforcement officers and other staff employed by the federal government are not authorized to enforce the Michigan ORV Act but do cite individuals into federal court for violations of federal land use regulations.

<sup>\*</sup>See Section 4.13, below, for more information on MCL 324.81133(r).

**Note:** The Huron-Manistee National Forest is located in the northern portion of the Lower Peninsula. In this forest, trails are “closed unless posted open” to ORV use. ORVs licensed as such may use trails, roads, and areas designated and signed for ORV use. Vehicles licensed under the Motor Vehicle Code may use all forest roads. The Huron-Manistee National Forest may be reached at 1-800-821-6263.

The Hiawatha National Forest is located in the eastern and central portions of the Upper Peninsula. The Ottawa National Forest is situated in the northwest corner of the Upper Peninsula. In both of these forests, roads marked with vertically numbered signposts are closed unless otherwise posted open. In the Ottawa National Forest, all trails are generally open to ORV use except for

designated wilderness and semiprimitive nonmotorized areas, designated footpath only trail systems, and any areas posted closed. The Hiawatha National Forest may be reached at 1-906-786-4062 and the number for the Ottawa National Forest is 1-906-932-1330 extension 350.

## 4.6 Enforcement of ORV Act on Private Property

All of the offenses within the ORV Act apply to ORVs operated on both private property and public property. The only three exceptions are as follows:

\*See Section 4.10, below.

- Licensing requirements do not apply to ORVs that are operated solely on private property by the owner of the property, a family member of the owner, or an invited guest of the owner.\* MCL 324.81102(2).

\*See Section 4.14, below.

- Children between 10 and 12 years of age may operate four-wheeled ATVs if they are on private property owned by a parent or legal guardian.\* MCL 324.81129(2), (5), and (13).

\*See Section 4.14, below.

- Children under 10 years of age may operate four-wheeled ATVs on private property while performing farm-related work activities.\* *Id.*

**Note:** The DNR Law Enforcement Division believes that the primary responsibility of Michigan’s conservation officers in the area of ORV enforcement is protecting the natural resources and safeguarding the health and safety of individuals utilizing public lands for recreation. General enforcement of the ORV Act is focused on public lands. Conservation officers do enforce the ORV Act on private property when it is necessary to protect the safety and welfare of an individual in imminent danger (where a child is involved or there is a reasonable suspicion the operator is under the influence) or where damage is being done to public natural resources (damage to streams or regulated wetlands).

\*MCL 324.81133(i) is quoted at Section 4.13, below.

Conservation officers also respond to private property cases of reported trespass. See MCL 324.81133(i) for the prohibition against the operation of an ORV on the private property of another person.\*

## 4.7 Rule Making Authority of DNR

The DNR has the authority to create administrative rules and orders for the regulation of ORVs. This authority is contained in MCL 324.504, which states:

“(1) The [DNR] shall promulgate rules for the protection of the lands and property under its control against wrongful use or

occupancy as will ensure the carrying out of the intent of this part to protect the lands and property from depredations and to preserve the lands and property from molestation, spoilation (sic), destruction, or any other improper use or occupancy.

\* \* \*

“(4) The [DNR] shall issue orders necessary to implement rules promulgated under this section. These orders shall be effective upon posting.

“(5) A person who violates a rule promulgated under this section or an order issued under this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$500.00.”

The administrative rules can be accessed in the Michigan Administrative Code or viewed on the DNR website at [www.michigan.gov/dnr/0,1607,7-153-10366\\_11861---,00.html](http://www.michigan.gov/dnr/0,1607,7-153-10366_11861---,00.html) (last visited June 29, 2005). Orders issued by the DNR are generally location-specific rules, although they may be statewide in scope. The orders are also available on the DNR’s website.

## 4.8 Penalty Provisions in ORV Act

### A. Misdemeanors and State Civil Infractions

Except as otherwise provided, a person who violates the ORV Act is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days; or
- fine of not less than \$50.00 or more than \$1,000.00; or
- both.

MCL 324.81147(1).

However, MCL 324.81147(2) provides that the following offenses are state civil infractions punishable by a civil fine of not more than \$500.00:

- MCL 324.81105—Failure to obtain or transfer title to an ORV.\*
- MCL 324.81107—Manufacturer’s certificate of origin for a new ORV.
- MCL 324.81115—Licensing of ORV required.\*
- MCL 324.81116—Failure to obtain a license for an ORV.\*

\*See Section 4.9, below.

\*See Section 4.10, below.

\*See Section 4.10, below.

\*See Section 4.14, below.

\*See Section 4.11, below.

\*See Section 4.11, below.

\*See Section 4.11, below.

\*See Section 4.17, below.

\*See Section 4.11.

\*See Section 4.17.

- MCL 324.81121—Renting, leasing, or furnishing ORV; maintaining safe operating condition.
- MCL 324.81130—Obligation of persons under 16 years of age to complete a safety education course before operating an ORV.\*
- MCL 324.81133(b)—Failure to wear a crash helmet and protective eyewear.\*
- MCL 324.81133(c)—Operating without headlights and/or taillights from 1/2 hour after sunset until 1/2 hour before sunrise.\*
- MCL 324.81133(d)—Operating without a proper hand or foot braking system.\*
- MCL 324.81133(f)—Operating at a greater speed than minimally required to maintain controlled forward movement on frozen waters within 100 feet of a person, a fishing shanty or shelter, or an area that is cleared for skating purposes.\*
- MCL 324.81133(g)—Operating without a proper muffler and exhaust system.\*
- MCL 324.81133(h)—Operating at a greater speed than minimally required to maintain controlled forward movement while the ORV is within 100 feet of a dwelling.\*
- MCL 324.81133(j)—Operating in an area where public hunting is permitted during the regular November firearm deer season between the hours of 7:00 a.m. and 11:00 a.m. or 2:00 p.m. and 5:00 p.m.
- MCL 324.81133(l)—Operating on or around a cemetery or burial ground, or on land used as an airport.
- MCL 324.81133(m)—Operating within 100 feet of a slide, ski, or skating area.

## B. Restoration of Damaged Lands and Impounding and Seizure of ORVs

MCL 324.81147(4), (5), and (6) contain provisions regarding restoration of damaged land, impounding and seizure of ORVs by peace officers, and court orders authorizing the DNR to sell impounded ORVs. MCL 324.81147(4)–(6) state:

“(4) In addition to the penalties otherwise provided under this part, a court of competent jurisdiction may order a person to restore, as nearly as possible, any land, water, stream bank, streambed, or other natural or geographic formation damaged by the violation of this part to the condition it was in before the violation occurred.

“(5) The [DNR] or any other peace officer may impound the ORV of a person who violates a provision of this part that is punishable as a misdemeanor or who causes damage to the particular area in which the ORV was used in the commission of the violation.

“(6) Upon conviction of a person for violation of a provision of this part that is punishable as a misdemeanor or any other provision of this part that results in damage to the particular area in which the ORV was used, a court of competent jurisdiction may order an ORV and any personal property on the ORV seized as a result of the violation returned to the owner or upon recommendation of the local prosecuting attorney turned over to the [DNR]. If the ORV and any other property is turned over to the [DNR], they shall be disposed of in the manner provided for condemnation of property in part 16. The proceeds realized by the [DNR] under this subsection shall first be used to restore areas damaged by ORV use with the balance to be deposited in the ORV trail improvement fund.”

### **C. Minimum State Costs and Justice System Assessment**

Effective October 1, 2003, a schedule of minimum state costs was established for all misdemeanor and felony convictions, including ORV convictions. MCL 600.8381(4) states:

“Beginning October 1, 2003, when fines and costs are assessed by a judge or district court magistrate, the defendant shall be ordered to pay costs of not less than \$45.00 for each conviction for a serious misdemeanor or a specified misdemeanor or costs of not less than \$40.00 for each conviction for any other misdemeanor or ordinance violation.”

“Specified misdemeanors” are misdemeanor violations of the statutory provisions listed in MCL 780.901(h). The only “specified misdemeanors” discussed in this chapter are operating an ORV while intoxicated, MCL 324.81134(1) and (2), and operating an ORV while visibly impaired, MCL 324.81135. MCL 780.901(h)(iii). A “specified misdemeanor” also includes a violation of a local ordinance substantially corresponding to MCL 324.81134(1), (2), or MCL 324.81135. MCL 780.901(h)(x).

If a court orders a defendant to pay any combination of fines, costs, or assessments, the court shall order the defendant to pay minimum state costs of not less than \$60.00 for felony convictions. MCL 769.1j(1)(a). The only felonies discussed in this chapter are OWI or OWI-third offense, MCL 324.81134(1) or (2); OWI or OWI causing death, MCL 324.81134(7); and OWI or OWI causing serious impairment of a body function, MCL 324.81134(8).

Payment of minimum state costs must be a condition of a defendant's probation. MCL 771.3(1)(g) and MCL 769.1j(3).

Also effective October 1, 2003, a justice system fund assessment of \$10.00 shall be ordered in addition to other fines and costs imposed for state and municipal civil infractions. MCL 600.8727(4) and MCL 600.8827(4).

\*Drunk driving offenses in the ORV Act can be found in Part C, below.

## Part B—Traffic Offenses in the ORV Act\*

### 4.9 Titling Requirements

#### A. Statute

The ORV Act requires all ORVs to be titled with the Secretary of State. MCL 324.81103. If the vehicle is used exclusively as an ORV, it must be titled pursuant to the requirements of the ORV Act. *Id.* However, if the vehicle is titled pursuant to the Motor Vehicle Code, then the ORV title must be surrendered to the Secretary of State. MCL 324.81104. There is no exemption to the titling requirements for ORVs operated solely on private property.

The titling requirements apply to both purchasers of ORVs and to dealers who sell ORVs at retail. MCL 324.81109(1)–(2) state:

“(1) The purchaser or other transferee of an ORV subject to the titling provisions of this part shall, except as provided in subsection (2), make application to the [Secretary of State] for issuance of a certificate of title to the ORV. The application shall be filed within 15 days after the date of purchase or transfer.

“(2) A dealer selling ORVs at retail, within 15 days after delivering an ORV to a retail purchaser, shall make application for issuance of an ORV certificate of title in the purchaser's name. The purchaser of the ORV shall sign the application and other papers necessary to enable the dealer to secure the title from the [Secretary of State]. If the ORV was not previously titled, the application shall be accompanied by a manufacturer's certificate of origin.”

#### B. Penalty

A person who violates MCL 324.81109 is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$100.00. MCL 324.81109(5).

## C. Additional Titling Provisions

Additional titling provisions within the ORV Act are as follows:

- MCL 324.81103 requires all ORVs purchased or acquired after April 1, 1991, to be titled with the Secretary of State.
- MCL 324.81104 provides that when ORVs are titled under the Motor Vehicle Code, the ORV title issued under the ORV Act shall be surrendered to the Secretary of State.
- MCL 324.81105 provides that an owner shall not sell an ORV without delivering a certificate of title, and a purchaser shall not purchase an ORV without obtaining such a certificate.
- MCL 324.81107 requires any person transferring an ORV to a dealer to provide a certificate of origin, and it also requires ORV dealers to obtain a manufacturer's certificate of origin when they acquire a new ORV.
- MCL 324.81108 establishes the requirements for an application for an ORV certificate of title.
- MCL 324.81109 requires a person purchasing or transferring an ORV to apply for certificate of title to the ORV.
- MCL 324.81110 provides that an \$11.00 fee is required for processing an application for a certificate of title. An additional \$5.00 fee is charged for an expedited title.

**Note:** The ORV Act does not require Michigan titles for ORVs that are owned by out-of-state residents and operated in Michigan.

## 4.10 Licensing Requirements

### A. Statutes

In addition to its titling requirements (which are administered by the Secretary of State), the ORV Act also has licensing requirements, which are administered by the DNR. MCL 324.81115. A driver's license is not required to operate an ORV;\* these licensing requirements refer to licensing the ORV, not the operator. MCL 324.81115(1) states:

“(1) Except as otherwise provided by law, an ORV shall not be operated on or over land, snow, ice, marsh, swampland, or other natural terrain unless licensed by the owner with the [DNR] or a dealer as provided in this part. Except as otherwise provided in this part, a vehicle operating on a forest trail or in a designated area shall be licensed under this part.”

\*But see Section 4.14, below, for a summary of the statute that requires children under 16 to have an ORV safety certificate.

In order to obtain a license, the owner of the ORV must file an application with the DNR or a dealer on forms provided by the DNR. MCL 324.81116(1). Along with the application, the owner must submit the application fee of \$16.25. Upon receipt of the application and payment of the fee, the DNR or dealer shall issue a license which is valid for the 12-month period beginning April 1 and ending March 31 each year. *Id.* The proceeds from the licensing fees collected by the DNR are used to fund the DNR's statewide ORV trail system and safety education programs. MCL 324.81117 to MCL 324.81119.

MCL 324.81116(3) states that “[t]he license shall be permanently attached to the vehicle in the manner prescribed and in the location designated by the [DNR] before the vehicle may legally be operated in accordance with this part.” DNR Administrative Rule 257.1691 states that the license shall be displayed as follows:

“The registration decal for an off-road recreation vehicle shall be permanently attached to the vehicle and shall be visibly displayed in the following manner:

“(a) For a 2-wheel vehicle, it shall be centered on the exposed surface of the rear fender.

“(b) For a 3- or 4-wheel multitrack or multiwheeler vehicle, it shall be attached and visible on a flat metal surface, bumper, or plate permanently attached to the rear of the vehicle.

“(c) For an amphibious machine, or a ground effect air-cushioned vehicle, it shall be centered on the rear thereof.”

**Exceptions.** There are four exceptions to the licensing requirements of the ORV Act. MCL 324.81115(2) states:

“Licensure is not required for an ORV used exclusively in a safety and training program as required in [MCL 324.81129].”

MCL 324.81116(4) provides the following exception to the licensure requirement:

“If at the time of sale the purchaser certifies on a form provided by the [DNR] that the purchased vehicle otherwise requiring a license under this part will be used and stored outside of this state and will not be returned by the purchaser to this state for use, then a license is not required.”



MCL 324.81102(1) states:

“A vehicle registered under the [Motor Vehicle Code] or a vehicle registered under part 801\* is exempt from the licensure provisions of this part, unless the vehicle is operated as an ORV off highways, roadways, streets, and forest roads.”

\*Part 801 refers to MCL 324.80101, the Marine Safety Act.

MCL 324.81102(2) states that “an ORV operated solely on private property by the owner of the property, a family member of the owner, or an invited guest of the owner is exempt from the licensure provisions of this part.”

## B. Penalties

A person who violates the licensing requirements of the ORV Act, as contained at MCL 324.81115 and MCL 324.81116, is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$500.00. MCL 324.81147(2).

## 4.11 Equipment Requirements

### A. Statute

Before an ORV may be operated on any property, the operator is responsible for meeting certain equipment requirements. MCL 324.81133 states, in part, that a person shall not operate an ORV:

“(b) Unless the person and any passenger in or on the vehicle is wearing on his or her head a crash helmet and protective eyewear approved by the United States department of transportation. This subdivision does not apply if the vehicle is equipped with a roof that meets or exceeds standards for a crash helmet and the operator and each passenger is wearing a properly adjusted and fastened safety belt.

“(c) During the hours of 1/2 hour after sunset to 1/2 hour before sunrise without displaying a lighted headlight and lighted taillight.

“(d) Unless equipped with a braking system that may be operated by hand or foot, capable of producing deceleration at 14 feet per second on level ground at a speed of 20 miles per hour; a brake light, brighter than the taillight, visible when the brake is activated to the rear of the vehicle when the vehicle is operated during the hours of 1/2 hour after sunset and 1/2 hour before sunrise; and a throttle so designed that when the pressure used to advance the throttle is removed, the engine speed will immediately and automatically return to idle.

\* \* \*

“(g) Unless the vehicle is equipped with a spark arrester type United States forest service approved muffler, in good working order and in constant operation. Exhaust noise emission shall not exceed . . . [see statute for detailed requirements for exhaust noise emissions.]”

## B. Penalty

A violation of any of these provisions is a state civil infraction punishable by a civil fine of not more than \$500.00. MCL 324.81147(2).

# 4.12 Operation of ORVs on Public Highways and Streets

## A. Statute

MCL 324.81122 states:

“(1) A person shall not operate an ORV that is not registered under the [Motor Vehicle Code] upon a public highway, street, or right-of-way of a public highway or street, except as provided in section [MCL 324.81131\*] or under the following conditions and circumstances:

“(a) The operator of a vehicle may cross a public highway, other than a limited access highway, at right angles, for the purpose of getting from 1 area to another, if the operation can be done in safety. The operator shall bring the vehicle to a complete stop before proceeding across a public highway, and shall yield the right-of-way to oncoming traffic.

“(b) A vehicle may be operated on a street or highway for a special event\* of limited duration and conducted according to a prearranged schedule only under permit from the governmental unit having jurisdiction. A special event involving ORVs may be conducted on the frozen surface of public waters only under permit from the [DNR].

“(c) A farmer, employee of a farmer, or family member of a farmer who is at least 16 years of age may operate an ORV on the extreme right side of a roadway or highway right-of-way when it is not practicable to operate off that roadway or highway right-of-way. Such operation shall be limited to traveling to or from the farmer’s residence or work location or field during the course of farming operations. An ORV shall not be operated pursuant to this

\*MCL 324.81131 permits local governments to establish ORV access routes.

\*See Administrative Rule 299.921(h) for the definition of “event.”

subdivision during the period of 30 minutes before sunset to 30 minutes after sunrise, when visibility is substantially reduced due to weather conditions, or in a manner so as to interfere with traffic. . . . An operator of an ORV under this subdivision shall have attached to the ORV a flag made of reflective material. The flag shall extend not less than 8 feet from the surface of the roadway and not less than 4 feet above the top of the ORV. The flag shall be not less than 12 inches high by 18 inches long and not measure less than 100 square inches.”

## **B. Penalties**

Operation of ORVs on public highways and streets is a misdemeanor punishable by:

- imprisonment for not more than 90 days; or
- fine of not less than \$50.00 or more than \$1,000.00; or
- both.

MCL 324.81147(1).

## **4.13 Operation of ORVs in Prohibited Places**

### **A. Misdemeanors**

MCL 324.81133 prohibits the operation of ORVs in certain places. MCL 324.81133, in part, states that an ORV shall not be operated:

“(e) In a state game area or state park or recreation area, except on roads, trails, or areas designated for this purpose; on state owned lands under the control of the [DNR] other than game areas, state parks, or recreational areas where the operation would be in violation of rules promulgated by the [DNR]; in a forest nursery or planting area; on public lands posted or reasonably identifiable as an area of forest reproduction, and when growing stock may be damaged; in a dedicated natural area of the [DNR]; or in any area in such a manner as to create an erosive condition, or to injure, damage, or destroy trees or growing crops. However, the [DNR] may permit an owner and guests of the owner to use an ORV within the boundaries of a state forest in order to access the owner’s property.

\* \* \*

“(i) In or upon the lands of another without the written consent of the owner, owner’s agent or lessee, when required by part 731 [Recreational Trespass Act]. . . . Failure to post private property or fence or otherwise enclose in a manner to exclude intruders or of the private property owner or other authorized person to personally communicate against trespass does not imply consent to ORV use.

\* \* \*

“(n) On an operating or nonabandoned railroad or railroad right-of-way, or public utility right-of-way, other than for the purpose of crossing at a clearly established site intended for vehicular traffic, except railroad, public utility, or law enforcement personnel while in performance of their duties, and except if the right-of-way is designated as established in [MCL 324.81127].

“(o) In or upon the waters of any stream, river, bog, wetland, swamp, marsh, or quagmire except over a bridge, culvert, or similar structure.

\* \* \*

“(r) In a manner contrary to operating regulations on public lands.”\*

\*This offense is commonly cited by conservation officers when an ORV is operated in a closed area of the federal forest lands. See Section 4.5, above.

**Penalties.** A violation of one of the above-enumerated offenses is a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not less than \$50.00 or more than \$1,000.00; or
- both.

MCL 324.81147(1).

## B. State Civil Infractions

MCL 324.81133 also prohibits the operation of ORVs in the following locations:

“(j) In an area on which public hunting is permitted during the regular November firearm deer season from 7 a.m. to 11 a.m. and from 2 p.m. to 5 p.m., except during an emergency or for law enforcement purposes, to go to and from a permanent residence or a hunting camp otherwise inaccessible by a conventional wheeled vehicle, to remove a deer, elk, or bear from public land which has been taken under a valid license; or except for the conduct of necessary work functions involving land and timber survey,

communication and transmission line patrol, and timber harvest operations; or on property owned or under control of the operator or on which the operator is an invited guest. A hunter removing game pursuant to this subdivision shall be allowed to leave the designated trail or forest road only to retrieve the game and shall not exceed 5 miles per hour. A vehicle registered under the code is exempt from this subdivision while operating on a public highway or public or private road capable of sustaining automobile traffic. A person holding a valid permit to hunt from a standing vehicle issued pursuant to part 401, or a person with disabilities using an ORV to access public lands for purposes of hunting or fishing through use of a designated trail or forest road, is exempt from this subdivision.

\* \* \*

“(l) On or across a cemetery or burial ground, or land used as an airport.

“(m) Within 100 feet of a slide, ski, or skating area, unless the vehicle is used for purposes of servicing the area.”

**Penalty.** Violation of these offenses is a state civil infraction punishable by a civil fine of not more than \$500.00. MCL 324.81147(2).

## 4.14 Operation of ORVs by Children Under 16 Years of Age

### A. Safety Education Course

#### 1. Statutes

MCL 324.81130(1) states:

“A person who is under 16 years of age, before operating an ATV or ORV, shall complete an ORV safety education course approved by the [DNR]. This course may include a written examination and a driving test designed to test the competency of the applicant. Upon successful completion of this safety education course, a person shall receive an ORV safety certificate.”

The requirements for conducting safety education courses and inspections of those courses are governed by MCL 324.81130(2)–(6).

#### 2. Penalty

A person who violates this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$500.00. MCL 324.81147(2).

## B. Age-Specific Restrictions

### 1. Statutes

MCL 324.81129 establishes additional restrictions on the operation of ORVs by minors. The 17 subsections of MCL 324.81129 describe three different offenses, each of which may be committed by three different groups of persons. The following chart summarizes these offenses:

**Chart 4.14—Misdemeanor Offenses—Operation of ORVs by Minors**

| Person Responsible   | Prohibited Conduct   | Statutory Reference   |
|--|--|---|
| A parent or legal guardian of a child less than 16 years of age. | “[S]hall not permit the child to operate an ORV unless the child is under the direct visual supervision of an adult and the child has in his or her immediate possession an ORV safety certificate. . . .”   | MCL 324.81129(1).   |
| A parent or legal guardian of a child less than 12 years of age. | “[S]hall not permit the child to operate a 4-wheeled ATV, unless the child is not less than 10 years of age and is on private land owned by a parent or legal guardian of the child.”  | MCL 324.81129(2).<br><b>Note:</b> This subsection does not apply to ATVs used in agricultural operations. |
| A parent or legal guardian of a child less than 16 years of age. | “[S]hall not permit the child to operate a 3-wheeled ATV.”   | MCL 324.81129(3).   |
| The owner or person in charge of an ORV.                         | “[S]hall not knowingly permit the vehicle to be operated by a child less than 16 years of age unless the child is under the direct visual supervision of an adult and the child has in his or her immediate possession an ORV safety certificate. . . .” | MCL 324.81129(4).   |
| The owner or person in charge of a four-wheeled ATV.             | “[S]hall not knowingly permit the vehicle to be operated by a child less than 12 years of age, unless the child is not less than 10 years of age and is on private land owned by a parent or legal guardian of the child.”                               | MCL 324.81129(5).<br><b>Note:</b> This subsection does not apply to ATVs used in agricultural operations. |

**Chart 4.14—Misdemeanor Offenses—Operation of ORVs by Minors**

| Person Responsible                                    | Prohibited Conduct   | Statutory Reference  |
|---|--|--|
| The owner or person in charge of a three-wheeled ATV. | “[S]hall not knowingly permit the vehicle to be operated by a child less than 16 years of age.”  | MCL 324.81129(6).  |
| A child who is less than 16 years of age.             | Shall not operate an ORV unless “the child is under the direct visual supervision of an adult and the child has in his or her immediate possession an ORV safety certificate. . . .” | MCL 324.81129(12).   |
| A child who is less than 12 years of age.             | “[S]hall not operate a 4-wheeled ATV, unless the child is not less than 10 years of age and is on private land owned by a parent or legal guardian of the child.”                    | MCL 324.81129(13).<br><b>Note:</b> This subsection does not apply to ATVs used in agricultural operations. |
| A child who is less than 16 years of age.             | “[S]hall not operate a 3-wheeled ATV.”   | MCL 324.81129(14).   |

A child under the age of 16 who is operating an ORV must present the ORV safety certificate to a peace officer upon request. MCL 324.81129(15).

MCL 324.81129(16) provides the following additional restrictions on minors operating ORVs:

“Notwithstanding any other provision of this section, an operator who is less than 12 years of age shall not cross a highway or street. An operator who is not less than 12 years of age but less than 16 years of age may cross a highway or street or operate on the right-of-way or shoulder of designated access routes pursuant to [MCL 324.81131] if the operator has a valid ORV safety certificate in his or her immediate possession and meets any other requirements under this section for operation of the vehicle.”

## 2. Penalties

A violation of any of the above-enumerated offenses is a misdemeanor punishable by:

- imprisonment for not more than 90 days; or
- fine of not less than \$50.00 or more than \$1,000.00; or

- both.

MCL 324.81147(1).

## 4.15 Allowing a Mentally or Physically Incompetent Person to Operate an ORV

### A. Statute

MCL 324.81129(7) states:

“The owner or person in charge of an ORV shall not knowingly permit the vehicle to be operated by a person who is incompetent to operate the vehicle because of mental or physical disability except as provided in [MCL 324.81131].”

**Exception.** MCL 324.81131(2) allows a municipality to pass an ordinance allowing operation of an ORV by a permanently disabled person.

### B. Penalties

A person who violates MCL 324.81129(7) is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days; or
- fine of not less than \$50.00 or more than \$1,000.00; or
- both.

MCL 324.81147(1).

## 4.16 Operation of ORVs in a Careless, Unsafe, or Otherwise Prohibited Manner

### A. Statutes

MCL 324.81133, in part, prohibits a person from operating an ORV under any of the following circumstances:

“(a) At a rate of speed greater than is reasonable and proper, or in a careless manner having due regard for conditions then existing.

\* \* \*



“(k) While transporting on the vehicle a bow unless unstrung or encased, or a firearm unless unloaded and securely encased, or equipped with and made inoperative by a manufactured keylocked trigger housing mechanism.

\* \* \*

“(p) To hunt, pursue, worry, kill, or attempt to hunt, pursue, worry, or kill a bird or animal, wild or domesticated.

“(q) In a manner so as to leave behind litter or other debris.

“(r) In a manner contrary to operating regulations on public lands.

“(s) While transporting or possessing, in or on the vehicle, alcoholic liquor in a container that is open or uncapped or upon which the seal is broken, except under either of the following circumstances:

“(i) The container is in a trunk or compartment separate from the passenger compartment of the vehicle.

“(ii) If the vehicle does not have a trunk or compartment separate from the passenger compartment, the container is encased or enclosed.

“(t) While transporting any passenger in or upon an ORV unless the manufacturing standards for the vehicle make provisions for transporting passengers.”

Also, it is a misdemeanor to refuse to stop an ORV at the direction of a law enforcement officer, or at the direction of a private land owner. MCL 324.81146(1)–(2) state:

“(1) An operator of an ORV, who is given by hand, voice, emergency light, or siren a visual or audible signal by a law enforcement officer acting in the lawful performance of his or her duty, directing the operator to bring the vehicle to a stop, and who willfully fails to obey the signal by increasing speed, extinguishing lights, or otherwise attempting to flee or elude the officer, is guilty of a misdemeanor. The officer giving the signal shall be in uniform, and the officer’s vehicle shall be easily identifiable as an official law enforcement vehicle.

“(2) The operator of a vehicle on the private premises of another, when visibly hailed by the owner or the owner’s authorized agent, shall bring the vehicle to an immediate stop and provide personal identification. Refusal to obey such a request to stop or subsequent escape or attempt to escape is a misdemeanor.”

## B. Penalties

The above-enumerated offenses are misdemeanors punishable by:

- imprisonment for not more than 90 days; or
- fine of not less than \$50.00 or more than \$1,000.00; or
- both.

MCL 324.81147(1).

## 4.17 Operation of ORVs at a Greater Than Minimum Speed at Prohibited Locations

### A. Misdemeanors

#### 1. Statutes

MCL 324.81133(u) prohibits a person from operating an ORV:

“On adjacent private land, in an area zoned residential, within 300 feet of a dwelling at a speed greater than the minimum required to maintain controlled forward movement of the vehicle except on a roadway, forest road, or forest trail maintained by or under the jurisdiction of the [DNR], or on an ORV access route as authorized by local ordinance.”

MCL 324.81101(r) defines “roadway” as the “portion of a highway improved, designated, or ordinarily used for vehicular travel. If a highway includes 2 or more separate roadways, the term roadway refers to a roadway separately, but not to all roadways collectively.”

MCL 324.81101 also provides the following relevant definitions:

“(e) ‘Forest road’ means a hard surfaced road, gravel or dirt road, or other route capable of travel by a 2-wheel drive, 4-wheel conventional vehicle designed for highway use, except an interstate, state, or county highway.

“(f) ‘Forest trail’ means a designated path or way capable of travel only by a vehicle less than 50 inches in width.”

#### 2. Penalties

A violation of MCL 324.81133(u) is a misdemeanor punishable by:

- imprisonment for not more than 90 days; or

- fine of not less than \$50.00 or more than \$1,000.00; or
- both.

MCL 324.81147(1).

## B. State Civil Infractions

### 1. Statute

MCL 324.81133(f) and (h) include two other locations where an ORV may not be operated at a rate of speed greater than the minimum required to maintain controlled forward movement. MCL 324.81133(f) and (h) state that an ORV may not be operated:

“(f) On the frozen surface of public waters within 100 feet of a person not in or upon a vehicle, or within 100 feet of a fishing shanty or shelter or an area that is cleared of snow for skating purposes, except at the minimum speed required to maintain controlled forward movement of the vehicle, or as may be authorized by permit in special events.

\* \* \*

“(h) Within 100 feet of a dwelling at a speed greater than the minimum required to maintain controlled forward movement of the vehicle, except on property owned or under the operator’s control or on which the operator is an invited guest, or on a roadway, forest road, or forest trail\* maintained by or under the jurisdiction of the [DNR], or on an ORV access route as authorized by local ordinance.”

\*See Subsection 4.17(A), above, for the definition of “roadway,” “forest road,” and “forest trail.”

### 2. Penalty

A violation of one of the above provisions is a state civil infraction punishable by a civil fine of not more than \$500.00. MCL 324.81147(2).

## 4.18 Operation of ORV After Operating Privileges Have Been Suspended

A person’s right to operate an ORV may be suspended by the court as part of a sentence for a drunk driving offense, or by the Secretary of State as a result of a person’s refusal to submit to a chemical test.\* A person who operates an ORV while his or her right to operate an ORV has been suspended is guilty of a misdemeanor punishable by:

\*See Sections 4.20(B), 4.21(B), and 4.25(B), below.

- imprisonment for not more than 90 days; or
- fine of not more than \$1,000.00; or

- both.

MCL 324.81142.

## **4.19 Operation of ORV After Driver's License Has Been Suspended or Revoked**

### **A. Statute**

If a person's driver's license is revoked or suspended, he or she may not operate an ORV during the term of revocation or suspension. MCL 324.81140a(1) states:

"If the operator's or chauffeur's license of a person who is a resident of this state is suspended or revoked by the secretary of state under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or if the driver license of a person who is a nonresident is suspended or revoked under the law of the state in which he or she resides, that person shall not operate an ORV under this part for the same period."

### **B. Penalties**

#### **1. First Offense**

Operation of an ORV while a person's driver's license is suspended or revoked is a misdemeanor punishable by:

- imprisonment for not more than 93 days; or
- fine of not more than \$500.00; or
- both.

MCL 324.81140a(2)(a).

#### **2. Second or Subsequent Offense**

For a second or subsequent offense, operation of an ORV while a person's driver's license is suspended or revoked is a misdemeanor punishable by:

- imprisonment for not more than 180 days; or
- fine of not more than \$1,000.00; or
- both.

MCL 324.81140a(2)(b).

## Part C—Drunk Driving Offenses in the ORV Act

The statutory provisions dealing with operating an ORV while intoxicated or impaired are contained at MCL 324.81134 to MCL 324.81141. They are:

- MCL 324.81134(1)—Operating under the influence of intoxicating liquor and/or a controlled substance (OWI).\* \*See Section 4.21, below.
- MCL 324.81134(2)—Operating with an unlawful bodily alcohol content (OWI).\* \*See Section 4.21, below.
- MCL 324.81134(3)—Owner or person in charge or control of an ORV allowing a person who is under the influence of alcohol and/or a controlled substance to operate an ORV.\* \*See Section 4.24, below.
- MCL 324.81134(4)–(6)—Penalties for violating one of the above-enumerated crimes, 1st, 2nd, 3rd, or subsequent offense.
- MCL 324.81134(7)—Operating an ORV in violation of MCL 324.81134(1) or (2) causing the death of another person.\* \*See Section 4.22, below.
- MCL 328.81134(8)—Operating an ORV in violation of MCL 324.81134(1) or (2) causing serious impairment of a body function of another person.\* \*See Section 4.23, below.
- MCL 324.81135—Operating while impaired, 1st, 2nd, or subsequent offense.
- MCL 324.81136—Procedures for administering chemical tests of blood, breath, or urine.\* \*See Section 4.25, below.
- MCL 324.81137—Implied consent provisions requiring operators to submit to chemical tests of blood, breath, or urine.\* \*See Section 4.25(A), below.
- MCL 324.81138—Required reports to Secretary of State when operators refuse to submit to chemical tests.\* \*See Section 4.25(B), below.
- MCL 324.81139—Required notice of person’s right to request an administrative hearing.
- MCL 324.81140—Procedures at administrative hearings to decide whether a person’s right to operate an ORV should be suspended.
- MCL 324.81141—Refusal to submit to a preliminary breath test as requested by a peace officer.\* \*See Section 4.25(D), below.

For a discussion of drunk driving offenses under the Motor Vehicle Code, see Volume 3, Chapters 1–5.

## 4.20 Operating an ORV While Visibly Impaired (OWVI)

### A. Statutes

MCL 324.81135(1) states:

“A person shall not operate an ORV if, due to the consumption of intoxicating liquor, a controlled substance, as defined by . . . MCL 333.7104, or a combination of intoxicating liquor and a controlled substance, the person has visibly impaired his or her ability to operate the ORV. If a person is charged with violating [MCL 324.81134\*], a finding of guilty is permissible under this section.”

Before accepting a guilty plea, the court must advise the accused of “the statutory consequences possible as a result of a plea of guilty in respect to suspension of the person’s right to operate an ORV and the penalty imposed for violation of this section.” MCL 324.81135(6).

### B. Penalties

MCL 324.81135(5) requires the court order an alcohol assessment prior to sentencing a person convicted of operating an ORV while visibly impaired. MCL 324.81135(5) states:

“Before imposing sentence for a violation of this section or a local ordinance substantially corresponding to this section, the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services, to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services.”

#### 1. First Offense

A person convicted of a violation of MCL 324.81135 is guilty of a misdemeanor punishable by:

- imprisonment for not more than 93 days; or
- fine of not more than \$300.00; or
- both; and
- costs of prosecution.

\*See Section 4.21, below, for information on MCL 324.81134.

MCL 324.81135(2).

The court shall also order “the person convicted not to operate an ORV for a period of not less than 90 days or more than 1 year.” MCL 324.81135(2).

## **2. Second or Subsequent Offense**

A person who violates MCL 324.81135, or a substantially corresponding local ordinance, and has one or more prior convictions under MCL 324.81135 or MCL 324.81134 or a substantially corresponding local ordinance, is guilty of a misdemeanor punishable by:

- imprisonment for not more than one year; or
- fine of not more than \$1,000.00; or
- both.

MCL 324.81135(3).

For a second offense, the court shall also “order the person not to operate an ORV for a period of not less than 6 months or more than 18 months.” MCL 324.81135(3).

For a third or subsequent offense, the court “shall order the person not to operate an ORV for a period of not less than 1 year or more than 2 years.” MCL 324.81135(3).

## **3. License Sanctions**

The municipal judge or clerk of the court shall prepare and immediately submit an abstract to the Secretary of State for each case charging a violation of MCL 324.81135 or a substantially corresponding local ordinance. MCL 324.81135(7) and MCL 257.732(1)(c). The Secretary of State will assess four points against the defendant’s driver’s license when the defendant is convicted of operating an ORV while visibly impaired. MCL 257.320a(1)(i).

## **4. Reimbursement to State or Local Governments**

The court may order a person convicted of operating an ORV while impaired to “reimburse the state or a local unit of government for expenses incurred in relation to that incident including but not limited to expenses for an emergency response and expenses for prosecuting the person[.]” MCL 769.1f(1)(d).

## 5. Community Service

A person convicted of operating an ORV while impaired may be ordered to perform community service. MCL 324.81135(4) states:

“As part of the sentence for a violation of this section or a local ordinance substantially corresponding to this section, the court may order the person to perform service to the community, as designated by the court, without compensation, for a period not to exceed 12 days. The person shall reimburse the state or appropriate local unit of government for the cost of insurance incurred by the state or local unit of government as a result of the person’s activities under this subsection.”

### 4.21 Operating an ORV While Under the Influence of Intoxicating Liquor and/or a Controlled Substance or with an Unlawful Bodily Alcohol Content (OWI)

#### A. Statutes

MCL 324.81134(1)–(2) state:

“(1) A person who is under the influence of intoxicating liquor or a controlled substance, as defined by . . . MCL 333.7104, or a combination of intoxicating liquor and a controlled substance shall not operate an ORV.

“(2) A person who has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine shall not operate an ORV.”\*

**Note:** A person charged with violating MCL 324.81134 may be found guilty of operating an ORV while visibly impaired. MCL 324.81135(1). See Section 4.20, above, for more information on operating an ORV while impaired.

Before accepting a guilty plea, the court must advise the accused of “the statutory consequences possible as a result of a plea of guilty in respect to suspension of the person’s right to operate an ORV and the penalty imposed for violation of this section.” MCL 324.81134(11).

\*This is commonly referred to as a “per se” violation, or operating with an unlawful bodily alcohol content (UBAC).



## B. Criminal Penalties

Prior to sentencing the defendant for a conviction of MCL 324.81134(1) or (2), the court must order an alcohol assessment. MCL 324.81134(10) states, in part:

“Before imposing sentence for a violation of subsection (1) or (2) or a local ordinance substantially corresponding to subsection (1) or (2), the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services, to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services.”

### 1. First Offense

A person who is convicted of a violation of MCL 324.81134(1) or (2) is guilty of a misdemeanor punishable by:

- imprisonment for not more than 93 days; or
- fine of not less than \$100.00 or more than \$500.00; or
- both of the above; and
- costs of the prosecution.

MCL 324.81134(4).

The court shall also order the person convicted not to operate an ORV for a period of not less than six months or more than two years. MCL 324.81134(4).

### 2. Second Offense

A person convicted of a second violation of MCL 324.81134(1) or (2), or a substantially corresponding local ordinance, within seven years of the first conviction is guilty of a misdemeanor punishable by:

- imprisonment for not more than one year; or
- fine of not more than \$1,000.00; or
- both.

MCL 324.81134(5).

The court shall also order the person convicted not to operate an ORV for a period of not less than one year or more than two years. MCL 324.81134(5).

### **3. Third or Subsequent Offense**

A person convicted of a third or subsequent violation of MCL 324.81134(1) or (2), or a substantially corresponding local ordinance, within ten years is guilty of a felony punishable by:

- imprisonment for not less than one year or more than five years; or
- fine of not less than \$500.00 or more than \$5,000.00; or
- both.

MCL 324.81134(6).

The court shall also order the person convicted not to operate an ORV for a period of not less than one year or more than two years. MCL 324.81134(6).

### **4. License Sanctions**

The municipal judge or clerk of the court shall prepare and immediately submit an abstract to the Secretary of State for each case charging a violation of MCL 324.81134 or a substantially corresponding local ordinance. MCL 324.81134(12) and MCL 257.732(1)(c). The Secretary of State will assess six points against the defendant's driver's license. MCL 257.320a(1)(c).

The Secretary of State must impose a \$1,000.00 driver responsibility fee for a conviction of MCL 324.81134 or a substantially corresponding local ordinance. MCL 257.732a(2)(a)(iii). The fee shall be assessed for two consecutive years. Failure to pay a driver responsibility fee within the time prescribed will result in driver's license suspension. MCL 257.732a(3), (5).

### **5. Reimbursement to State or Local Governments**

The court may order a person convicted of MCL 324.81134(1) or (2) to "reimburse the state or a local unit of government for expenses incurred in relation to that incident including but not limited to expenses for an emergency response and expenses for prosecuting the person[.]" MCL 769.1f(1)(d).

### **6. Community Service**

In addition to the jail time or fines enumerated above, the court may order a defendant to perform community service. MCL 324.81134(9) states:

"As part of the sentence for a violation of subsection (1) or (2), or a local ordinance substantially corresponding to subsection (1) or (2), the court may order the person to perform service to the

community, as designated by the court, without compensation, for a period not to exceed 12 days. The person shall reimburse the state or appropriate local unit of government for the cost of insurance incurred by the state or local unit of government as a result of the person's activities under this subsection."

### C. Case Law Interpreting the OWI Provisions in the ORV Act

In *People v O'Neal*, 198 Mich App 118, 120 (1993), the Court of Appeals was asked to interpret the relationship between the OWI provisions in the ORV Act and the OWI provisions in the Motor Vehicle Code. The defendant in O'Neal was charged with OWI third offense under the Motor Vehicle Code. The defendant had been operating an ORV at time of his arrest. The defendant argued that he should have been charged under the ORV Act, not under the Motor Vehicle Code.

The Court of Appeals held that a defendant who operates an ORV on a public highway could be charged under either the Motor Vehicle Code or the ORV Act. *Id.* at 121. The Court found that the purposes of both statutes are promoted by holding that an intoxicated person operating an ORV on the highway can be charged with OWI under the Motor Vehicle Code. *Id.* at 122.

## 4.22 OWI or OWVI Causing Death

### A. Statutes

MCL 324.81134(7) states:

"A person who operates an ORV in violation of [MCL 324.81134(1) or (2)] or [MCL 324.81135] and by the operation of that ORV causes the death of another person is guilty of a felony . . ."

MCL 324.81134(11) states:

"Before accepting a plea of guilty under this section, the court shall advise the accused of the statutory consequences possible as the result of a plea of guilty in respect to suspension of the person's right to operate an ORV and the penalty imposed for violation of this section."

### B. Penalties

Operating an ORV while intoxicated resulting in the death of another person is a felony punishable by:

- imprisonment for not more than 15 years; or

- fine of not less than \$2,500.00 or more than \$10,000.00; or
- both.

MCL 324.81134(7).

**Note:** A person may be charged with and convicted of MCL 324.81134(7) for each death arising out of the same criminal transaction, and the court may order the terms of imprisonment to be served consecutively to each other. MCL 769.36(1)(c).

## 1. License Sanctions

The municipal judge or clerk of the court shall prepare and immediately submit an abstract to the Secretary of State for each case charging a violation of MCL 324.81134 or a substantially corresponding local ordinance. MCL 324.81134(12) and MCL 257.732(1)(c). The Secretary of State will assess six points against the defendant's driver's license. MCL 257.320a(1)(c).

The Secretary of State must impose a \$1,000.00 driver responsibility fee for a conviction of MCL 324.81134 or a substantially corresponding local ordinance. MCL 257.732a(2)(a)(iii). The fee shall be assessed for two consecutive years. Failure to pay a driver responsibility fee within the time prescribed will result in driver's license suspension. MCL 257.732a(3), (5).

## 2. Reimbursement to State or Local Governments

The court may order a person convicted of OWI or OWVI causing death to "reimburse the state or a local unit of government for expenses incurred in relation to that incident including but not limited to expenses for an emergency response and expenses for prosecuting the person[.]" MCL 769.1f(1)(d).

## 4.23 OWI or OWVI Causing Serious Impairment of a Body Function

### A. Statutes

MCL 324.81134(8) states:

"A person who operates an ORV within this state in violation of [MCL 324.81134(1) or (2)] or [MCL 324.81135] and by the operation of that ORV causes a serious impairment of a body function of another person is guilty of a felony . . . . As used in this subsection, 'serious impairment of a body function' includes, but is not limited to, 1 or more of the following:

"(a) Loss of a limb or use of a limb.

“(b) Loss of a hand, foot, finger, or thumb or use of a hand, foot, finger, or thumb.

“(c) Loss of an eye or ear or use of an eye or ear.

“(d) Loss or substantial impairment of a bodily function.

“(e) Serious visible disfigurement.

“(f) A comatose state that lasts for more than 3 days.

“(g) Measurable brain damage or mental impairment.

“(h) A skull fracture or other serious bone fracture.

“(i) Subdural hemorrhage or subdural hematoma.”

MCL 324.81134(11) states:

“Before accepting a plea of guilty under this section, the court shall advise the accused of the statutory consequences possible as the result of a plea of guilty in respect to suspension of the person’s right to operate an ORV and the penalty imposed for violation of this section.”

## **B. Penalties**

Operating an ORV while intoxicated and causing a serious impairment of a body function is a felony punishable by:

- imprisonment for not more than five years; or
- fine of not less than \$1,000.00 or more than \$5,000.00; or
- both.

MCL 324.81134(8).

### **1. License Sanctions**

The municipal judge or clerk of the court shall prepare and immediately submit an abstract to the Secretary of State for each case charging a violation of MCL 324.81134 or a substantially corresponding local ordinance. MCL 324.81134(12) and MCL 257.732(1)(c). The Secretary of State will assess six points against the defendant’s driver’s license. MCL 257.320a(1)(c).

The Secretary of State must impose a \$1,000.00 driver responsibility fee for a conviction of MCL 324.81134 or a substantially corresponding local ordinance. MCL 257.732a(2)(a)(iii). The fee shall be assessed for two

consecutive years. Failure to pay a driver responsibility fee within the time prescribed will result in driver's license suspension. MCL 257.732a(3), (5).

## **2. Reimbursement to State or Local Governments**

The court may order a person convicted of OWI or OWVI causing serious impairment of a body function to "reimburse the state or a local unit of government for expenses incurred in relation to that incident including but not limited to expenses for an emergency response and expenses for prosecuting the person[.]" MCL 769.1f(1)(d).

## **4.24 Knowingly Allowing Another to Operate an ORV While Under the Influence of Intoxicating Liquor and/or a Controlled Substance**

### **A. Statutes**

MCL 324.81134(3) states:

"The owner or person in charge or in control of an ORV shall not authorize or knowingly permit the ORV to be operated by a person who is under the influence of intoxicating liquor or a controlled substance or a combination of intoxicating liquor and a controlled substance."

MCL 324.81101(n)(i)–(iii) define "owner" as any of the following:

"(i) A vendee or lessee of an ORV which is the subject of an agreement for the conditional sale or lease of the ORV, with the right of purchase upon performance of the conditions stated in the agreement, and with an immediate right of possession vested in the conditional vendee or lessee.

"(ii) A person renting an ORV, or having the exclusive use of an ORV, for more than 30 days.

"(iii) A person who holds legal ownership of an ORV."

### **B. Penalties**

A violation of MCL 324.81134(3) is a misdemeanor punishable by:

- imprisonment for not more than 93 days; or
- fine of not less than \$100.00 or more than \$500.00; or
- both of the above; and

- costs of the prosecution.

MCL 324.81134(4).

## 1. License Sanctions

The municipal judge or clerk of the court shall prepare and immediately submit an abstract to the Secretary of State for each case charging a violation of MCL 324.81134 or a substantially corresponding local ordinance. MCL 324.81134(12) and MCL 257.732(1)(c). The Secretary of State will assess six points against the defendant's driver's license. MCL 257.320a(1)(c).

The Secretary of State must impose a \$1,000.00 driver responsibility fee for a conviction of MCL 324.81134 or a substantially corresponding local ordinance. MCL 257.732a(2)(a)(iii). The fee shall be assessed for two consecutive years. Failure to pay a driver responsibility fee within the time prescribed will result in driver's license suspension. MCL 257.732a(3), (5).

## 2. Reimbursement to State or Local Governments

The court may order a person convicted of MCL 324.81134(3) to "reimburse the state or a local unit of government for expenses incurred in relation to that incident including but not limited to expenses for an emergency response and expenses for prosecuting the person[.]" MCL 769.1f(1)(d).

# 4.25 Chemical Tests of Blood, Urine, or Breath

## A. Implied Consent

A person who operates an ORV is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance in his or her blood. MCL 324.81137(1). A person may be asked by a peace officer to submit to chemical tests of his or her blood, breath, or urine if the person is arrested for a violation of any of the following:

- Operating an ORV while under the influence of intoxicating liquor and/or a controlled substance (OWI), MCL 324.81134(1).
- Operating an ORV with an unlawful bodily alcohol content (OWI), MCL 324.81134(2).
- Operating an ORV while visibly impaired (OWVI), MCL 324.81135.
- A substantially corresponding local ordinance of one of the above-enumerated crimes.

- Negligent homicide resulting from the operation of an ORV, if the officer has reasonable grounds to believe that the person was operating while impaired by or under the influence of intoxicating liquor or a controlled substance.
- Manslaughter resulting from the operation of an ORV, if the officer has reasonable grounds to believe that the person was operating while impaired by or under the influence of intoxicating liquor or a controlled substance.

MCL 324.81137(1)(a)–(b).

MCL 324.81137(2) contains an exception to the implied consent law for the purposes of drawing blood. A person afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician shall not be considered to have given consent to the withdrawal of blood. *Id.*

## **B. Suspension of Operating Privileges for Refusing to Submit to a Chemical Test**

A person who is requested to submit to a chemical test based upon the implied consent law has the right to refuse the peace officer's request. If an individual refuses the request, the test must *not* be given until the officer obtains a court order requiring the individual to submit to the test. MCL 324.81138(1). If a person refuses, the officer shall forward a written report to the Secretary of State. The report must indicate that the officer had reasonable grounds to believe the individual committed a violation described in the implied consent statute and that the officer advised the individual of the consequences of refusal and the individual still refused to submit to the chemical test. MCL 324.81138(2).

Once the Secretary of State receives an officer's report indicating that an individual refused to take a chemical test upon the officer's request, the Secretary of State is required to immediately notify the person in writing, by mail to the person's last known address, of the following:

- A report has been received indicating the refusal. MCL 324.81139(1).
- Within 14 days after the date of the notice, the person may request an administrative hearing. MCL 324.81139(1).
- Failure to request an administrative hearing within 14 days will result in the suspension of the person's right to operate an ORV. MCL 324.81139(2)
- The person is not required to retain counsel for the hearing, although counsel is permitted to represent him or her at the hearing. MCL 324.81139(2).



MCL 324.81140(2)–(3) provide the administrative hearing requirements following a person’s refusal to submit to a chemical test. If a person does not respond to the notice within 14 days, or if the administrative hearing results in a finding that the person unreasonably refused the chemical test, then the Secretary of State shall suspend that person’s right to operate an ORV for the following periods of time:

- Six months for the first refusal.
  - One year for a second or subsequent refusal within seven years.
- MCL 324.81140(1) and (4).

### **C. Jury Instructions Following a Person’s Refusal to Submit to a Chemical Test**

If the prosecutor or defendant requests an instruction regarding the defendant’s refusal to submit to a chemical test, MCL 324.81136(8) requires the following jury instruction:

“Evidence was admitted in this case which, if believed by the jury, could prove that the defendant had exercised his or her right to refuse a chemical test. You are instructed that such a refusal is within the statutory rights of the defendant and is not evidence of the defendant’s guilt. You are not to consider such a refusal in determining the guilt or innocence of the defendant.”

### **D. State Civil Infractions for Refusing to Submit to a Preliminary Chemical Breath Analysis Test (PBT)**

MCL 324.81141(1) states:

“A peace officer who has reasonable cause to believe that a person was operating an ORV and that the person by the consumption of intoxicating liquor may have affected his or her ability to operate the ORV, may require the person to submit to a preliminary chemical breath analysis.”

A person who refuses to submit to a PBT upon a peace officer’s lawful request is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$100.00. MCL 324.81141(5).

## **4.26 Admissibility of Chemical Tests**

MCL 324.81136(1)–(2) state:

“(1) In a criminal prosecution for violating [MCL 324.81134] or [MCL 324.81135] or a local ordinance substantially

corresponding to [MCL 324.81134] or [MCL 324.81135], or in a criminal prosecution for negligent homicide or manslaughter resulting from the operation of an ORV while the operator is alleged to have been impaired by or under the influence of intoxicating liquor or a controlled substance or a combination of intoxicating liquor and a controlled substance, or to have had a blood alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, the amount of alcohol in the operator's blood at the time alleged as shown by chemical analysis of the operator's blood, urine, or breath shall be admissible into evidence.

“(2) If a chemical test of an operator's blood, urine, or breath is given, the results of the test shall be made available to the person charged with an offense enumerated in subsection (1) or the person's attorney upon written request to the prosecution, with a copy of the request filed with the court. The prosecution shall furnish the report at least 2 days before the day of the trial and the results shall be offered as evidence by the prosecution in a criminal proceeding. Failure to fully comply with the request shall bar the admission of the results into evidence by the prosecution.”

**Note:** Preliminary chemical breath tests (PBTs) are admissible under certain circumstances. MCL 324.81141(3) states:

“The results of a preliminary chemical breath analysis shall be admissible in a criminal prosecution for a crime enumerated in [MCL 324.81136(1)] or in an administrative hearing held under [MCL 324.81140\*], solely to assist the court or hearing officer in determining a challenge to the validity of an arrest. This subsection does not limit the introduction of other competent evidence offered to establish the validity of an arrest.”

\*For more information on administrative hearings held pursuant to MCL 324.81140, see Section 4.25(B), above.

## 4.27 Presumptions Based on Chemical Tests

MCL 324.81136(3) contains statutory presumptions based on the results of the chemical analysis of the defendant's blood, breath, or urine. It applies to all of the ORV drunk driving offenses except the UBAC or “per se” offense found in MCL 324.81134(2).<sup>\*</sup> MCL 324.81136(3). These presumptions are as follows:

- “If at the time the operator had an alcohol content of 0.07 grams or less per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, it shall be presumed that the operator was not under the influence of intoxicating liquor.” MCL 324.81136(3)(a).
- “If at the time the operator had an alcohol content of more than 0.07 grams but less than 0.10 grams per 100 milliliters of blood,

\* See Section 4.21, above, for a summary of MCL 324.81134(2).

per 210 liters of breath, or per 67 milliliters of urine, it shall be presumed that the operator's ability to operate an ORV was impaired within the provisions of [MCL 324.81135] due to the consumption of intoxicating liquor." MCL 324.81136(3)(b).

- "If at the time the operator had an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, it shall be presumed that the operator was under the influence of intoxicating liquor." MCL 324.81136(3)(c).

## **Appendix — Michigan's Off-Road Vehicle Guide**